

1991 ONTARIO LAW REFORM COMMISSION REPORT

ONTARIO LAW REFORM COMMISSION



1991

The Ontario Law Reform Commission was established on May 8, 1964 by the *Ontario Law Reform Commission Act*. The Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General.

The Commissioners are:

Chair

Rosalie S. Abella, BA, LLB (from March 20, 1989)

Vice-Chair

Richard E.B. Simeon, Ph.D (from April 14, 1989)

Commissioners

Earl A. Cherniak, QC, BA, LLB

J. Robert S. Prichard, MBA, LLM (to July 31, 1990)

John D. McCamus, MA, LLM (from August 1, 1990)

Margaret A. Ross, BA (Hon), LLB

The Commission's office is located on the Eleventh Floor at 720 Bay Street, Toronto, Ontario, Canada, M5G 2K1. Telephone (416) 326-4200. FAX (416) 326-4693.

This Report is also available in French.

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Ontario
Law Reform
Commission

To The Honourable Howard Hampton
Attorney General for Ontario

Dear Attorney General:

We have the honour to present the Report of the Ontario Law Reform Commission, for the period ending March 31, 1991, in accordance with section 2(3) of the *Ontario Law Reform Commission Act*, R.S.O. 1980.

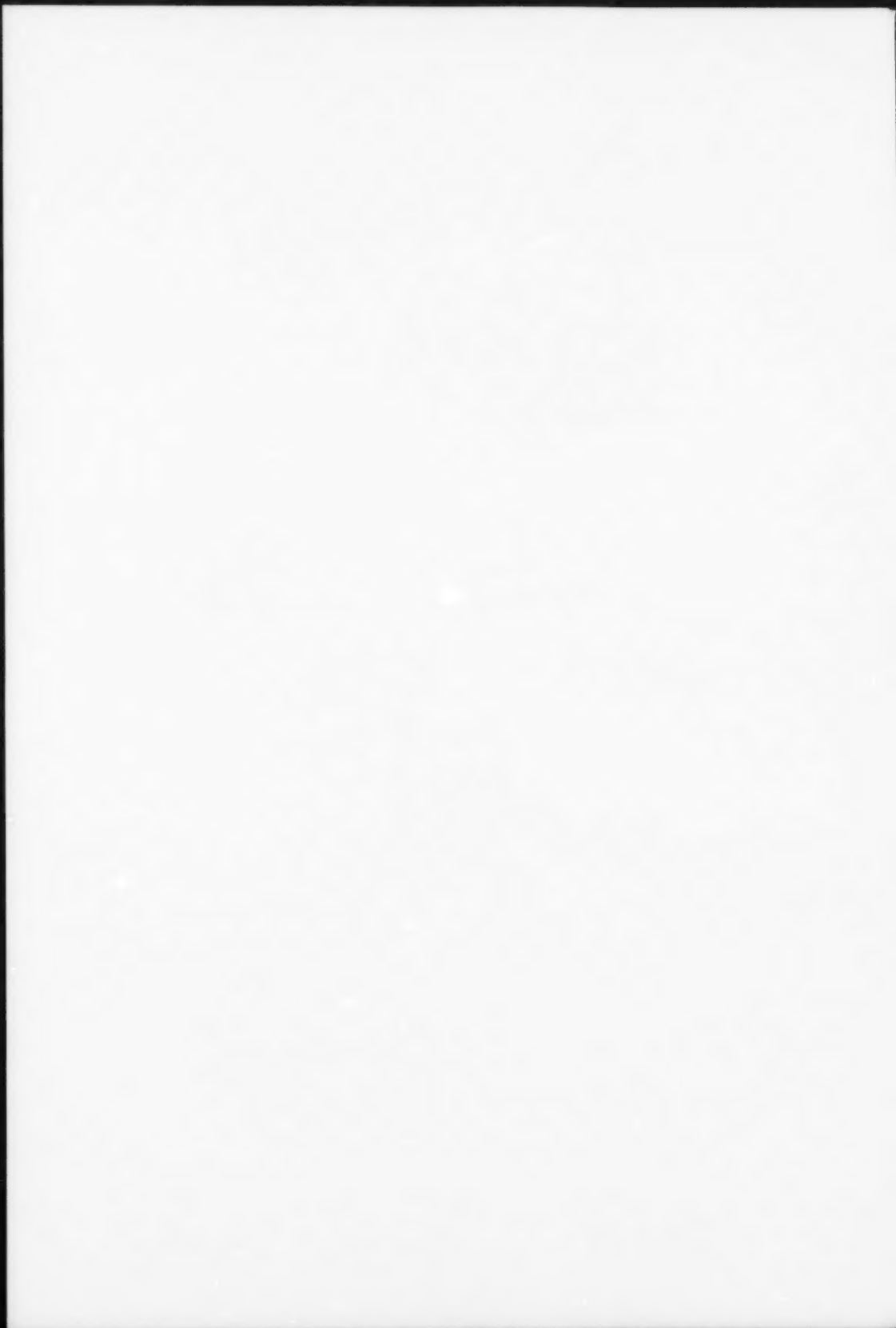
Rosalie S. Abella
Chair

Richard E. B. Simeon
Vice Chair

Earl A. Cherniak
Commissioner

John D. McCamus
Commissioner

Margaret A. Ross
Commissioner



INTRODUCTION

In 1964, Ontario established the first Law Reform Commission in the Commonwealth. In the next decade, governments across Canada and in several other countries followed Ontario's example. A little over 25 years later, these Commissions are solidly ensconced as respected partners in the justice systems of provinces and countries all over the world. Their work constitutes a unique contribution to legal policy, and is widely respected for its intellectual and analytical rigour.

In Ontario alone, one hundred reports have been produced. Seventy five have been partially or wholly implemented and another six are currently being examined by government for possible implementation. But whether or not a Report gets statutory endorsement is by no means the only measure of its value. Implementation is a function of many variables, only one of which is the cogency of the recommendations. Commissions make recommendations based on analysis of law and policy which the incumbent government may not share at any given moment. Far from taking away from the merit either of the recommendations or the government's response, it merely demonstrates that in public policy, the "urgent" often overwhelms the "important", and the duty to decide which is which belongs to governments.

And while governments decide on the timeliness of implementation, Law Reform Commissions identify issues and generate ideas leaving it to governments to choose how and when to act.

Law Reform Commissioners have a unique vantage point as independent legal policy think tanks. They wander the landscape of public issues, consulting with its occupants, and sift through their articulated desires for change, clarification, modernization, or access to law and its institutions. Some of these concerns find their way into comprehensive commission reports whose contents in turn may shape legislation or judicial decisions or academic criticism or editorial comments or speeches or policy submissions or private conversations. If they do no more than inspire and inform intelligent debate on matters of legal policy, however, whether or not they are translated into new legal doctrines, Reports of Law Reform Commissions have fulfilled an important function no other public institution has had the mandate or exclusive duty to perform.

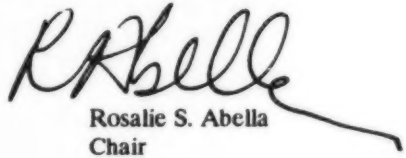
That is why the Ontario Law Reform Commission has traditionally taken the time to produce the kind of Report time cannot diminish. It has also recognized that different kinds of Reports can, without diminished quality,

supplement the traditional exhaustive Reports the Commission has produced and will continue to produce with pride.

To that end, the Commission has begun to develop a range in the kinds of Reports it issues, in order to respond to the variety of concerns raised by the wider communities it has consulted.

Collections of articles on a given topic, Roundtable discussions leading to Discussion Reports, and Discussion Papers by individuals making recommendations in discrete policy areas, have been added to the Commission's supply of law reform products. An Advisory Board, whose members are listed in Appendix D, was created by the Commission in 1989 to provide a small but representative consultative group from among the Commission's constituencies in the legal, academic, and public spheres. Chief Justice Edward D. Bayda of the Saskatchewan Court of Appeal and Professor Peter Hogg of York University were appointed Visiting Scholars to the Commission to assist in our discussions. In addition, as the list of groups and organizations in Appendix E shows, the Commission continues to consult widely not only to learn what issues should be addressed, but to learn what policy recommendations the people most directly affected feel ought to be made once an issue is identified for reform.

The Commission's agenda has never been fuller and this represents a challenge both inevitable and welcome. It can only hope that in 25 years when an assessment is made of the Commission's first 50 years, the public tribute will be as glowing for the last 25 years as for the first.



Rosalie S. Abella
Chair

THE PROGRAM

A. COMPLETED PROJECTS

The Law of Standing (1989)

In its *Report on the Law of Standing*, the Ontario Law Reform Commission proposed a new approach to standing to sue in Ontario, expanding the basis on which individuals would have access to the courts to raise important issues of public interest.

The Project Director was Professor W. A. Bogart, of the Faculty of Law, University of Windsor. All members of the Commission's legal staff were involved in the project, with primary responsibility falling on Larry M. Fox and Marilyn R. Leitman.

In chapter 2 of the report, the present Ontario law of standing in civil proceedings is reviewed. Chapter 3 examines the deficiencies in the law and the case for reform. Chapter 4 sets out the Commission's proposals for reform of the law of standing, and chapter 5 contains an examination of intervention in civil proceedings. The question of costs in relation to both standing and intervention is dealt with in chapter 6. Finally, Appendix 1 sets out the Commission's proposed *Access to Courts Act*, and Appendix 2 discusses reform proposals made in other jurisdictions.

In the Commission's view, fundamental change is required to remedy existing serious deficiencies in the law of standing. Of particular concern is the public nuisance standing rule. Under that rule, in cases of public nuisance or where the public interest or a public right is involved, only the Attorney General may bring proceedings in the courts. Individuals have standing to do so only with the consent of the Attorney General, unless they can show that their own personal, proprietary or pecuniary interest has been affected in a different way from the rest of the public.

The Commission criticizes the public nuisance rule for two reasons. First, where proceedings are brought against the government, the Attorney General is both the person deciding whether the proceeding may be brought and the person responsible for defending the government. Second, requiring an individual to show a unique personal interest, as a condition of being granted standing, restricts access to our courts unduly.

The effect of the public nuisance rule is most significantly felt in the area of environmental law, where it may frustrate efforts by individuals to prevent or halt pollution.

The Supreme Court of Canada has departed from the public nuisance standing rule in constitutional and administrative law. In these contexts, the Attorney General has no control over standing, and individuals need not show that their own personal, proprietary or pecuniary interest has been affected in a way different from the rest of the public. An individual need show only that there is a serious issue as to the legislation's validity, that he or she has a genuine interest as a citizen in the possibility of its invalidity, and that there is no other reasonable and effective manner in which the issue may be brought before a court.

While the Commission lauds the general direction taken by the Supreme Court, it is concerned that the precise nature and application of the test for standing are uncertain.

The Commission therefore recommends that the present provincial law of standing be abolished and replaced by a new *Access to Courts Act*. The main purpose of this Act would be to increase access to the courts by granting standing to individuals, whether or not they have a personal, proprietary or pecuniary interest that has been specially or uniquely affected. The Commission's new approach to the right of individuals to sue in Ontario courts reflects the fact that individuals may be affected by conduct in a way that is not tied to a traditional legal interest.

Under the new Act, a single, more liberal standing rule would apply to all types of civil proceeding, including proceedings brought under the *Judicial Review Procedure Act*. The basic rule would be that every person should be entitled to commence and maintain a legal proceeding unless the court is satisfied that the factors against proceeding outweigh the factors in favour of proceeding.

As part of this fundamental reform, the public nuisance standing rule would be abolished. The Commission specifically recommends that no person should be denied the right to sue simply because that person has no personal, proprietary or pecuniary interest in the proceeding, or has suffered or may suffer injury or harm of the same kind or to the same degree as other persons. The Attorney General would no longer have a right to block access to the courts; however, the existing right of the Attorney General to bring a proceeding would not be limited or affected in any way by the Commission's proposals.

Where a person's right to sue is challenged, the court would be required to consider the following:

- (a) regardless of whether or not the interest of the plaintiff is personal, proprietary or pecuniary,
 - (i) whether another proceeding has been instituted against the same defendant in which the issues include those present in the proceeding that is opposed, if the interests of the plaintiff can be met by intervening in the other proceeding and it is reasonable to expect the plaintiff to do so;
 - (ii) whether to proceed would be unfair to persons affected, but the fact that the outcome may affect a person whose interest is personal, proprietary or pecuniary shall not necessarily be considered unfair; and
 - (iii) whether or not another reasonable and effective method exists to raise the issues that are sought to be litigated; and
- (b) where the interest of the plaintiff is not personal, proprietary or pecuniary,
 - (i) whether the issues raised in the proceeding are trivial, and
 - (ii) the number of persons affected in any way, whether personally or otherwise;

and the court may consider any other factor that the court considers just.

The Commission recommends that the standing provisions in the proposed *Access to Courts Act* be in addition to, and not detract from, any right to bring a proceeding that is conferred by any other Act. The *Access to Courts Act* would co-exist with any other legislation dealing with standing, and a person who does not meet the requirements for standing to sue under other Ontario legislation would be entitled to seek standing under the new Act.

The *Report on the Law of Standing* also considers intervention, that is, the right of a person to participate in proceedings to which that person is not an original party. The Commission is confident that an innovative and flexible use of the present intervention rule, rule 13 of the rules of court, would result from the proposed liberalized standing regime. It therefore recommends that the existing rule 13 should be left to evolve on a case-by-case basis. If, however, rule 13 does not develop in the manner anticipated, the Commission recommends that it be reconsidered.

In the report, much attention is given to the issue of costs. The Commission concludes that without fundamental change to the present law of costs,

its proposals for reform of the law of standing would be ineffective. A person without any personal, proprietary or pecuniary interest in the outcome of a proceeding, or an interest that does not justify the proceeding economically, is not likely to bring a proceeding where there is a risk of paying costs if unsuccessful.

Accordingly, the Commission recommends that in certain circumstances, the court would be prevented from ordering the plaintiff to pay costs to a defendant, except where the conduct is vexatious, frivolous or abusive. Such a rule would apply where the following conditions are met: the proceedings involve issues whose importance extends beyond the immediate interests of the parties involved; the person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if that person has such an interest, it clearly does not justify the proceeding economically; the issues have not previously been determined by a court in a proceeding against the same defendant; and the defendant has a clearly superior capacity to bear the costs of the proceeding.

The Commission recognizes that uncertainty over whether a person will enjoy immunity from costs may itself discourage the initiation of an action where that person has little or no financial interest in the outcome of the proceeding. To meet this difficulty, the Commission further recommends that, at any time in a proceeding, a person may ask the court to make a decision whether that person would be immune from being ordered to pay costs.

As to the costs payable by a client to the client's own lawyer, the Commission recommends that a person with a costs immunity and that person's lawyer should be able to enter into a form of contingency fee agreement, providing for payment to the lawyer only in the event of success in the proceeding. Recognizing the dangers of a conflict of interest for the lawyer under any contingency arrangement, the Commission further recommends that it should not be permissible for the agreement to specify the amount payable in the event of success as a gross sum, percentage, or commission. The agreement may, however, include an amount payable in respect of fees that is reasonable compensation for the risk assumed by the lawyer.

The issue of costs is also considered in connection with intervention. Consistent with its general costs proposals, the Commission recommends that intervenors should enjoy an immunity from costs in certain circumstances, unless the conduct is vexatious, frivolous or abusive. An intervenor would be immune from costs where the following conditions have been met: the proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved; the intervenor has no personal, proprietary or pecuniary interest in the outcome of the proceeding or, if the

intervenor has such an interest, it clearly does not justify the intervention economically; and, the intervenor has contributed significantly to the resolution of the issues. While an intervenor generally may recover costs from another party, an intervenor would not be able to recover costs from a plaintiff who has a costs immunity.

Covenants Affecting Freehold Land (1989)

In the Commission's *Report on Covenants Affecting Freehold Land*, the Commission deals with both positive and restrictive covenants, or obligations, affecting land, other than those between landlord and tenant.

The report is based on a research paper prepared for the Commission by Professor A. H. Oosterhoff, of the Faculty of Law, University of Western Ontario. Jody Morrison, a member of the Commission's legal staff, prepared the final report.

In chapter 2 of the report, the law of covenants in Ontario is examined. Chapter 3 looks at the various approaches to reform, either proposed or adopted, in England, Trinidad and Tobago, New Zealand, and the United States. It also contains a brief discussion of the American law of covenants. The Commission's conclusions and recommendations for reform are set out in chapter 4.

As indicated, the report is concerned with both positive and negative covenants. A positive covenant is one that requires a person to do something on that person's land, whereas a restrictive covenant is one that prohibits a person from doing something on the land. In general, two parcels of land are involved: one that has the burden of the covenant, and one that has the benefit. The burden of a covenant is the duty to perform it, or the liability to be sued upon it, if the covenant is not performed, while the benefit of a covenant is the right to enforce it.

In the report, the Commission identifies two fundamental deficiencies in the law of covenants. As the principal difficulty, the Commission cites the fact that, except in the landlord and tenant context, the burden of a positive covenant does not run with land; that is, it cannot be enforced by the owner of the benefited land against subsequent owners of the burdened land. This rule often operates to defeat the legitimate expectations of the parties. For example, at present, if a person agrees with a neighbour that the neighbour, and those who purchase the neighbour's property in the future, will maintain a common fence or driveway, the obligation will not be binding on future owners of that property. Similarly, where the owners in a property development agree that they and subsequent owners of the various pieces of

property will pay for the maintenance of amenities provided in the development, the obligation will not bind the future owners. In addition, the neighbour in the first example, and the original owners in the second, will remain liable for contraventions of the obligation even after they have sold their property.

The second problem the Commission identifies deals with restrictive covenants. Although both the benefit and the burden of restrictive covenants may run with land, the law in this area is unduly complex and uncertain.

In order to address these deficiencies, two general recommendations are made. First, the Commission concludes that the law should be reformed to permit the burden of a positive covenant to run with land, so that it will be enforceable against subsequent owners of the burdened land. Second, the Commission recommends that the law of restrictive covenants should be reformed to remove the present complexity and uncertainty. These reforms will be accomplished through the creation of a new interest in land, referred to as a "land obligation". The report includes numerous recommendations establishing a comprehensive scheme for the creation and operation of this new interest.

Land obligations will include both positive and restrictive obligations, and will permit both the benefit and the burden of such obligations to run with land. In addition, the benefit of a land obligation will be permitted to exist either as annexed or attached to land (referred to in the report as the "dominant land"), or "in gross", that is, for the personal benefit of the person entitled to enforce it, without the necessity of it being attached to dominant land.

The report recommends that any obligation should be capable of being imposed as a land obligation, including restrictive obligations, positive obligations, reciprocal payment obligations, positive user obligations, and access obligations. Moreover, the Commission concludes that it should be possible to include certain supplementary provisions in the instrument creating a land obligation, and that such provisions should take effect as part of the land obligation.

The Commission recommends that provision should be made for the creation of development schemes, under which land obligations might be imposed and become binding upon, and mutually enforceable by, the owners of the individual units comprising the scheme. A development scheme will be able to provide for different obligations to be imposed on different units, or for some units to be free from obligations. Moreover, a development scheme will be able to provide for the variation or extinguishment of any

land obligation imposed under the scheme, and for any other matter desired by the parties.

The Commission concludes that it would be improper to impose the burden of certain types of land obligation on all persons who may have an interest in the land burdened by the obligation (referred to in the report as the "servient land"). The report therefore recommends that, subject to the exception noted below, restrictive and access obligations should be binding upon everyone who has an interest in, or who occupies, all or part of the servient land. Other land obligations, on the other hand, should be binding only on those persons who have certain substantial interests in the servient land. In accordance with the general rules of priority, however, the report recommends that no one should be bound by a land obligation if that person has priority over it by virtue of a prior registered interest. Finally, unless a contrary intention appears expressly in the creating instrument, the Commission concludes that the original maker of the land obligation should be discharged of the burden once the maker has parted with all interests in the land.

The report recommends that all persons bound by positive obligations, reciprocal payment obligations, and positive user obligations should be liable for a contravention of such obligations. By contrast, only the person bound by a restrictive or access obligation who actually committed the breach should be liable. However, where a person bound by a land obligation is a subsequent mortgagee, chargee, or holder of other security, the person should be liable for a breach of the land obligation only if that person was in possession of the servient land at the time of the breach. The parties will be permitted to vary the above rules for the purpose of restricting the circumstances in which a person may be held liable for the contravention of a land obligation. Finally, the report recommends that a right of contribution should exist among all persons who are liable for breach of a positive user obligation, reciprocal payment obligation, or positive user obligation.

Since land obligations include both positive and restrictive obligations, the Commission concludes that the range of available remedies for breach of a land obligation should include not only injunctions and other equitable relief, but also damages for moneys due under a land obligation, and, subject to the exception noted below, damages for both pecuniary and non-pecuniary kinds of loss. The parties, however, would be free to provide that, on breach of a land obligation, one or more types of liability shall be excluded, either in whole or in part. Moreover, a person will be entitled to a remedy in respect of a contravention only to the extent to which that person is materially prejudiced by the breach.

The Commission makes recommendations regarding a variety of methods by which land obligations and development schemes may be varied or extinguished. The report includes several recommendations respecting the extinguishment of land obligations where all or part of the servient land, and all or part of the dominant land, come into the ownership of the same person. Similarly, the report includes a recommendation respecting the extinguishment of development schemes, where all the units comprising the scheme come into the ownership of the same person. The Commission also concludes that although land obligations and development schemes should be extinguished automatically at the end of a period of forty years, it should be possible to renew a land obligation or development scheme. Moreover, the report recommends that where some, but not all, of the persons bound by or entitled to enforce a land obligation agree in writing to vary the obligation, the variation should be binding not only upon the parties to it, but, provided it is registered on title, also upon subsequent owners and subsequent adverse possessors of all or part of the land.

The report includes numerous recommendations respecting extinguishment and variation of land obligations and development schemes by the court. In this connection, the report recommends that the court should have the power to extinguish or vary any land obligation or development scheme, and that anyone interested in the servient land, including a purchaser under an agreement of purchase and sale, or a person with an option to purchase the land, should have the right to apply to the court for an order extinguishing or varying a land obligation or a development scheme. The Commission concludes that the court should have the power to order the extinguishment or variation of a development scheme or land obligation upon such terms and conditions as it believes to be appropriate, including the right to impose a new or additional obligation upon any person, provided the person consents to undertake the burden. As a condition of the variation or extinguishment of a land obligation, the court will be empowered to direct that the applicant pay compensation to any person bound by the order for any loss or disadvantage the person will suffer as a result of its terms. Finally, the report recommends that the court should be empowered to extinguish or vary a land obligation or development scheme on one or more of nine specific grounds.

With respect to the application of its proposals, the Commission concludes that, subject, to certain exceptions, the existing rules respecting the running of covenants should continue to apply to existing covenants, but should not apply to land obligations created after the proposals take effect. Finally, since the present law of covenants will continue to apply in limited circumstances, the Commission makes several recommendations for reform of that law.

Wrongful Interference with Goods (1989)

This Study Paper was written for the Commission by Professor Ralph L. Simmonds, of the Faculty of Law, McGill University, and Professor George R. Stewart, of the Faculty of Law, University of Windsor, with the assistance of Professor David M. Paciocco, of the Faculty of Law, Common Law Section, University of Ottawa. The Study Paper reflects the research and sets out the recommendations of the authors. For the reasons explained in the Commission's 1987-88 Annual Report, no formal report has been issued by the Commission.

The Study Paper examines critically the remedies available to those persons whose goods, or whose interests in goods, have been wrongfully interfered with by some other person.

Remedies for wrongful interference with goods is one of the most complex areas of law. Much of the law developed at a time when the requirements for commencing legal proceedings were quite different, and more complicated, than today. The subject matter examined in the Study Paper includes old legal causes of action, such as the action of replevin (to recover possession of goods), trespass to goods (which is concerned with the wrongful touching or taking of goods), and detinue (which deals with the wrongful withholding of goods). It also includes some relatively modern developments, such as the tort of conversion (which deals broadly with any dealing with goods in a manner inconsistent with the rights of the person entitled to them), the negligent causing of economic loss, and the tort of interference with a reversionary (or non-possessory) interest. The subject matter also includes the ancient self-help remedy of "recaption" (which is the taking of possession of goods by a person with a right to immediate possession of them), as well as other remedies concerning the recovery of goods.

The authors explore the complexities and deficiencies in the present law of remedies for wrongful interference with goods and conclude that, while radical reform is not necessary, the law needs to be amended by statute. Given the obvious overlap between many of the causes of action described above, and the fact that the rigidity of some of the property torts is essentially anachronistic since the abolition of the old "forms of action", which established rather artificial barriers to pursuing legal remedies, the authors make specific recommendations that seek to rationalize the law in this area. The Study Paper would retain much of the substance of the present law, but would make it more coherent as well as more consistent with the law and practice in closely related fields.

The Study Paper recommends that the law in the area should be dealt with by a statute that provides for a new tort called "wrongful interference with goods". The new tort includes the present actions of conversion, detainue, trespass to goods, injury to a reversionary interest in goods, negligence (if it results in loss or damage to goods) and, where appropriate, damage or loss arising out of breach of contract. In addition, the draft statute contains several provisions that seek to modernize and rationalize the present law. Among the more notable provisions are those that will make the new tort of wrongful interference with goods far less a matter of strict liability, that is, liability in the absence of fault. The draft Act will allow a wrongdoer who is not a merchant to defend a lawsuit by showing that a reasonable mistake was made. In addition, the Act will permit a defendant to argue that the plaintiff's own actions contributed to the loss, so that any damages ordered to be paid by the defendant should be reduced. It also provides for the right of one wrongdoer to obtain some compensation from other wrongdoers who also caused the loss to the plaintiff.

The recovery of goods will be more readily available in a wider range of fact situations. The draft Act provides for a general right of recovery at all stages in a lawsuit. This general right of recovery will be available even in cases where the claimant does not have an immediate right to possession, so long as no one else with an interest in the goods objects to such recovery.

The draft Act also contains innovative provisions that seek to clarify and control the self-help remedy of recaption, or recovery, of goods. In particular, the risk of, and liability for, injury to the person from whom the goods are sought, or to that person's property, are placed squarely on the party who is attempting to recover the goods. Furthermore, the right of that party to recover goods from a home is severely restricted in order to avoid volatile confrontations that could lead to personal injury and property damage.

The recommendations made in the Study Paper attempt to create a new, more comprehensive scheme that better serves modern commercial and consumer interests.

Liability of the Crown (1989)

The Ontario Law Reform Commission's *Report on the Liability of the Crown* is designed to advance three general objectives:

- (1) to make the law fairer to both Crown and citizen;
- (2) to bring the law into conformity with the general principles underlying the *Canadian Charter of Rights and Freedoms*, and

- (3) to simplify the law.

The Commission's report was directed and written by Professor Peter W. Hogg, Q.C., of Osgoode Hall Law School, York University. The final report was prepared by Judith Bellis, a member of the Commission's legal staff.

After dealing with several preliminary matters, including the rationale for reform and the historical development of Crown liability (chapter 1), the report considers Crown liability in the fields of tort (chapter 2) and contract (chapter 3). Chapter 4 discusses damages, injunctions, specific performance, declarations, judicial review and *habeas corpus*. Procedural and related issues are dealt with in chapter 5. The remaining portions of the report consider enforcement problems (chapter 6), the presumption of Crown immunity in respect of various statutory provisions (chapter 7) and the position of Crown agencies (chapter 8).

In the *Report on the Liability of the Crown*, the Commission identifies a number of anomalous and unjustified privileges and immunities that continue to be enjoyed by the Crown in its dealings with ordinary persons, despite major reforms in 1963. These various privileges and immunities not only occasionally work injustice in individual cases, they also create unnecessary complications in the law and legal hazards to persons dealing with the Crown.

In the Commission's view, the present law governing liability of the Crown, insofar as it still provides privileges and immunities not enjoyed by ordinary persons, is inconsistent with popular conceptions of government. Crown immunities are particularly contrary to a deeply-held notion that the government and its officials ought to be subject to the same legal rules as private individuals, and should be accountable to injured citizens for its wrongful conduct. A key element of this concept is the fact that the application of ordinary principles of law to government is placed in the hands of the ordinary courts, who are independent of government and therefore capable of being relied upon to award an appropriate remedy to a person who has been injured by unlawful government action.

The Commission observes that these longstanding constitutional notions of the rights of individuals *vis-à-vis* the state have been most recently exemplified, and immeasurably strengthened, by the passage of the *Canadian Charter of Rights and Freedoms* and by the broad and purposive approach that the Supreme Court of Canada has adopted in its interpretation. The Charter is, in that broad sense, the philosophical backdrop against which the reform proposals in the report are made.

In asserting as a general principle that the government and its servants should be subject to the ordinary law, the Commission does not deny that the Crown may require some unique powers and immunities in order to govern effectively. This reality is acknowledged throughout the report. The Commission emphasizes, however, that a long and powerful tradition requires that the scope of such powers and immunities must be carefully defined and should be no broader than is necessary to fulfil the particular policy and purpose for which they have been granted. The reform proposals in the report are intended to replace the current hodge-podge of rules, presumptions, privileges and immunities, largely based on an anachronistic historical rationale, with a rational and carefully designed set of rules appropriate to contemporary notions of government and citizens' rights.

The Commission therefore recommends that a new *Crown Liability Act* should be enacted to implement the reform proposals made in the report. The general and overarching recommendation is that the privileges of the Crown in respect of civil liabilities and civil proceedings should be abolished, and the Crown and its servants and agents should be subject to all the civil liabilities and rules of procedure that are applicable to other persons who are of full age and capacity. This recommendation is intended to apply with respect to all causes of action, including tort, contract, restitution, and breach of trust. The specific implications of this general proposal, and certain limited exceptions to it, are canvassed in succeeding chapters of the report.

The first specific area of Crown liability considered by the Commission is that of tort law. After identifying certain gaps in the direct tortious liability of the Crown, the Commission explains that its general recommendation is intended to encompass all kinds of civil liability, and would accordingly abolish any residual immunities of the Crown in tort. However, the Commission specifically recommends the abolition of any statutory provision that creates a Crown immunity with respect to property that vests by operation of law and without its knowledge.

The Commission next considers certain statutory immunities from civil liability enjoyed by many Crown employees in Ontario. The Commission concludes that ordinary principles of employment law, which allow for indemnification of employees by employers where appropriate, should govern the Crown and its servants or agents as well. The Commission recommends that all statutory immunity clauses should be repealed and replaced by an appropriate scheme of indemnity within two years after the proclamation of the new *Crown Liability Act*.

The report then reviews the current civil liability of judicial and quasi-judicial decision makers. The Commission concludes that there is no principled reason for treating quasi-judicial decision makers differently than judges

with respect to tortious liability, and recommends that every member of a board, commission or tribunal should enjoy the same immunity accorded to superior court judges when performing duties of a judicial nature.

The Commission concludes its discussion of tortious liability of the Crown by recommending the abolition of certain statutory provisions that currently preserve the Crown from vicarious liability with respect to conduct for which it should properly be liable.

In chapter 3, the Commission reviews the contractual liability of the Crown and finds the current law to be generally satisfactory. The earlier recommendations that the Crown should be subject to all the civil liabilities applicable to a private person, and that statutory immunity clauses protecting Crown servants should be abolished, would apply equally to the contractual liability of the Crown. The Commission specifically recommends the abolition of an existing common law doctrine that prohibits the Crown from fettering its discretion by contract.

In chapter 4, dealing with remedies, the Commission indicates that the Crown remains immune from injunction, specific performance, and orders in the nature of mandamus, prohibition, and certiorari under the *Judicial Review Procedure Act*. The Commission concludes that these immunities are unjustified, and recommends their abolition. It is further recommended that the anomalous and unnecessary procedure to obtain declaratory relief against the Attorney General, known as the *Dyson* procedure, should be abolished.

In chapter 5, the Commission deals with a variety of procedural and related matters. First, it considers the common law rule of Crown privilege with respect to disclosure of evidence. The Commission concludes that the current law, as established in *Carey v. The Queen in Right of Ontario*, is generally satisfactory. However, for greater certainty, it recommends that the rule should be expressly included as part of the proposed *Crown Liability Act*. The Commission also recommends the repeal of section 12 of the present *Proceedings Against the Crown Act*, which deals with disclosure and privilege in an incomplete and inappropriate manner.

The Commission then indicates that the current obligation of the Crown to give discovery is limited and unsatisfactory, and recommends that the Crown should be liable to give discovery in the same manner as if the Crown were a corporation. It also concludes that the current statutory prohibition with respect to jury trials against the Crown is unjustified, and recommends its repeal. And finally in this chapter, the Commission reviews the present state of the law relating to special limitation and notice periods in actions involving the Crown. It observes that it has recommended appropriate

reform measures with respect to these matters in its 1969 *Report on Limitation of Actions*, and calls once again for their implementation.

In chapter 6, the report turns to the enforcement of judgments, costs and interest. The Commission reviews the current immunity of the Crown from the enforcement mechanisms of execution and garnishment of debts owing to the Crown by third parties. The Commission concludes that a continuation of these immunities is justified on two grounds: first, such debts are almost invariably paid without recourse to enforcement mechanisms because the Treasurer of Ontario is under a statutory obligation to pay judgment debts; and second, the potentially disruptive effect of any seizure of public property militates strongly against providing such recourse. A recommendation is made, however, that certain residual Crown immunities from garnishment of debts owed by the Crown to a third party judgment debtor should be abolished.

The Commission then discusses the current immunity of the Crown from civil contempt for breach of a court order, and concludes that the historical rationale for that immunity is no longer persuasive. Under the Commission's proposals, the Crown will be liable for civil contempt to the same extent as if the Crown were a corporation. It is further recommended that, where the Crown is found in contempt, the court should direct its order to the minister responsible for the affairs of the particular ministry involved. In appropriate circumstances, an order can also be made against a Crown employee or agent.

As to the issue of costs, the Commission is of the view that the present law governing the liability of the Crown appears to be operating satisfactorily. However, to remove one area of possible uncertainty, it recommends that the Crown should receive and pay costs in accordance with the rules that apply in actions between private persons. Finally, in chapter 6, the Commission finds that, since the Crown is now under the same obligation to pay interest as a private person, no change in the law is necessary.

In chapter 7 of the report, an examination is made of the extent to which the Crown is subject to statutes. The Commission finds that the courts' unease with the existing general rule, which provides that the Crown is bound by statutes only where there is an express statement to that effect or where this arises by necessary implication, has generated an extraordinarily complicated body of case law. The Commission concludes that the current presumption should be reversed to provide that the Crown is subject to statute in the same way as any other person, and recommends that the *Interpretation Act* should be amended to provide that every Act and regulation made under it binds the Crown unless otherwise specifically provided.

The final chapter of the report reviews the law governing Crown agency and indicates that the status of Crown agent is determined either on the basis of the common law test of control or by express statutory designation. The Commission finds that the *Crown Agency Act*, which purports to confer Crown agency status on an ill-defined class of public bodies, does not alter this general rule. While acknowledging that the control test is subject to some uncertainty, the Commission concludes that the test operates in a generally satisfactory manner. The alternative of relying exclusively on an express statutory designation would not be satisfactory because it could narrow the range of persons who are Crown agents, and consequently limit the Crown's vicarious liability. The Commission also rejects the option of attempting to create a new definition of Crown agency, which would almost invariably suffer the interpretive uncertainty of the control test without the advantage of the courts' familiarity with that test. In the end, the Commission recommends that a Crown agent should continue to be identified by either the control test or by express statutory declaration. It further recommends that the *Crown Agency Act* and section 2(2) of the *Proceedings Against the Crown Act*, which exempts the Crown from liability in respect of a cause of action that is enforceable against a corporate Crown agent, should be abolished.

Damages for Environmental Harm (1990)

The Ontario Law Reform Commission's *Report on Damages for Environmental Harm* recommends the creation of a new statutory remedy for the protection of the environment—an award of civil damages payable to compensate the public for harm done to the environment, entirely independent of any damages that may be payable for private injury suffered by individuals or corporations.

This project evolved out of the Commission's 1989 *Report on the Law of Standing*. In the standing project, Professor W. A. Bogart, of the Faculty of Law, University of Windsor, who directed the project, and W. L. Vanveen, of the Ontario Bar, had prepared background papers that addressed several of the issues discussed in the environmental harm report. The report itself was written by Larry Fox and Ronda Bessner of the Commission's legal staff.

Under the Commission's proposals, the new civil damages remedy would be available not only to the Crown, but also to individuals and groups who would have the right to bring proceedings under the more liberal standing rule proposed by the Commission in its *Report on the Law of Standing*. Even an individual without a special personal, proprietary, or pecuniary interest in the proceeding may seek this remedy for the benefit of the public in the larger interest of protecting the environment. Such an individual would enjoy

the benefit of the favourable costs rules that we recommended in the Standing Report.

The Commission's endorsement of the new damages remedy follows from two basic premises: first, there may exist a public or general harm in the environmental context that is independent of any injury suffered by individuals personally; and second, individuals may have a legitimate stake in taking action responsive to this harm, even though they are not directly affected.

The introduction of a civil damages remedy would give courts needed flexibility in choosing the appropriate remedy when proceedings are brought in relation to pollution and other environmental injury. The Commission's view is that courts should be able to choose between injunctions and damages where harm to the environment is caused. It recommends that, in deciding whether to order an injunction or damages in connection with environmental harm, the court should be required to balance all the relevant factors, including the public interest in the protection of the environment, the impact on the defendant, and the social and economic consequences of each remedy.

Under the Commission's proposals, a court may order damages for environmental harm from a past injury. In addition, damages in connection with a harm continuing into the future may be ordered instead of an injunction, or where a court postpones the operation of an injunction for a certain period of time or orders a partial injunction.

In the report, much attention is given to the difficult problem of deciding how damages for environmental harm should be assessed by courts. The Commission reviews a number of methodologies, and considers the advantages and disadvantages of each. The relevant literature suggests a consensus among economists that, although certain methodologies ought to be employed in the vast majority of cases, no single method can be endorsed as suitable in all circumstances.

Natural resources have both use value and intrinsic or non-use value. Use value is based on the use to which natural resources may be put for practical human ends. By contrast, intrinsic value places a value on the preservation or continuing existence of natural resources. The Commission takes the view that courts ought to recognize both use value and intrinsic value in assessing damages for environmental harm, in the belief that it is the sum of these two values that more completely represents the true extent of the environmental loss.

Accordingly, the Commission recommends that, in assessing damages for environmental harm, there should be a rebuttable presumption in favour of the assessment methodologies that take account of both use and intrinsic values. Where this presumption is rebutted, a court may utilize the other methods discussed by the Commission, which focus primarily on use value.

The final questions considered in the report are to whom, and for what purposes, the damages are to be awarded, given that they are not sought for the plaintiff's own personal injury, but for the harm caused to the environment generally. The Commission recommends that an award of damages for environmental harm should be given to a special government body, with an explicit mandate to administer the award, rather than to the plaintiff.

What the government body must do with the award depends on the method of damages assessment used by the court. It may be required to use the funds to restore or replace the affected site, or to rehabilitate the environment generally, in any manner the government body deems appropriate.

Basis of Liability for Provincial Offences (1990)

The Ontario Law Reform Commission's *Report on the Basis of Liability for Provincial Offences* was based on a report prepared by Professor Don Stuart, of the Faculty of Law, Queen's University. The final report was prepared by Ronda Bessner of the Commission's legal staff.

In its report, the Commission recommends fundamental reform of the law relating to the categorization of provincial offences and other related matters. The report comes to the conclusion that the law is deficient in three main respects. First, there is no clear guidance concerning the basis of liability for provincial offences. Ontario legislation does not deal comprehensively with the basic issue concerning the degree of fault, if any, which must be established in order to obtain a conviction for different kinds of offences. Second, absolute liability offences continue to exist under provincial law. Under such offences, a person may be convicted where she has merely committed the physical act, or *actus reus*, of the offence, but has not been at fault. Finally, the Commission believes that the burden of proof in respect of provincial offences ought to be examined both as a matter of principle and in light of the *Canadian Charter of Rights and Freedoms*.

The Commission recommends the abolition of absolute liability offences under provincial law. The Commission is of the view that it is wrong in principle to convict a person merely for committing the prohibited physical

act, where the defendant has not engaged in morally blameworthy conduct. The Commission takes the position that legal responsibility for any provincial offence, however minor, should be based on some notion of fault.

The Commission also proposes the enactment of a new statutory regime to deal comprehensively with the basis of liability for provincial offences. This new legislation would strike a more appropriate balance between fairness to the individual and the essential law enforcement requirements of the community at large. Strict liability, or negligence, would constitute the minimum requirement of fault for all provincial offences, unless the Legislature expressly uses language connoting *mens rea*. In a strict liability offence, the standard is objective and is based on the conduct of the reasonable person in similar circumstances. *Mens rea*, on the other hand, is subjective and refers to fault based on an aware state of mind, such as intention, knowledge, recklessness or wilful blindness respecting the circumstances and/or consequences of the offence.

Although under the Commission's proposals strict liability would constitute the minimum standard, the Commission recommends that before an accused can be imprisoned for committing a provincial offence, either an aware state of mind or a marked and substantial departure from the conduct of a reasonable person in similar circumstances must be alleged and proved by the prosecution.

With respect to the burden of proof, the report recommends that, for *mens rea* and strict liability offences, the prosecution should continue to be required to establish beyond reasonable doubt that the defendant committed the physical act of the offence. In addition, for *mens rea* offences, the prosecution must prove beyond a reasonable doubt that the defendant committed the physical act with an aware state of mind. For strict liability offences, there would be a presumption that the defendant's conduct was not that of a reasonable person in similar circumstances. However, the defendant could not be convicted where some evidence is led to show that he took reasonable care to avoid the commission of the offence. Where such evidence of conduct capable of amounting to reasonable care has been adduced, thereby rebutting the presumption, in order to secure a conviction the prosecution would be required to establish the defendant's negligence beyond a reasonable doubt.

The Commission also makes proposals on a number of other related matters. The report deals with the appropriate sanction where a fine imposed under provincial legislation has not been paid. It recommends that section 70 of the *Provincial Offences Act* should be amended to ensure that only clearly wilful defaulters are liable to imprisonment for failure to pay a fine. Moreover, it is proposed that, unless it is unreasonable to do so, the

fine option program and the civil enforcement procedure under the Act ought to be resorted to before a warrant of committal can be issued.

Finally, the Commission recommends that every rule or principle of the common law and every provision of the *Criminal Code*, as amended from time to time, that is not limited to a specific offence, that renders any circumstance a justification or excuse for an act or omission, or a defence to an offence, should be available to a person charged with a provincial offence, except insofar as it is altered by or is inconsistent with any other Act.

The recommendations proposed in the report apply to offences appearing in provincial statutes and regulations, as well as to those imposed under municipal by-laws.

Administration of Estates of Deceased Persons (1991)

The Commission's *Report on Administration of Estates of Deceased Persons* was initially directed by Professor George W. Alexandrowicz, of the Faculty of Law, Queen's University. In 1985, direction of this project was assumed at the Commission by Larry M. Fox, Senior Counsel, who was primarily responsible for its completion. The report was written by Larry M. Fox, with the assistance of Jody Morrison, a member of the Commission's legal staff, and Professor Timothy Youdan, of Osgoode Hall Law School, York University.

The report deals with an area of the law that ultimately affects all of us.

Often close family members or friends of the deceased are named in the will or appointed by the court to administer the estate. This means that many of the people who may be called upon to carry out this task have not had the training to prepare them for it. Yet, in becoming responsible for the administration of an estate, they are nonetheless expected to do it in accordance with the law.

Administering an estate obviously occurs at an acutely sensitive time in the life of the family and friends of the deceased person. Issues as varied as the disposal of the deceased's body, the gathering of her assets, the payment of her debts, and the management of the remaining property until it is distributed properly will have to be addressed.

For these reasons, it is very important that the law governing the administration of the estates of deceased persons be rational, clear and accessible.

But it is not. The law is often difficult, uncertain, and obscure. It needs rationalization and modernization. The Commission's report therefore makes many recommendations for change.

While there are numerous recommendations, two fundamental policy directions are taken by the Commission. First, the Commission recommends that the position of persons who administer an estate—currently known as “personal representatives”—should generally be made similar to that of ordinary trustees. Personal representatives should have the same administrative powers as trustees, and should be subject to the same rules governing liability to others, compensation for their efforts, and termination of their responsibility. To signal clearly that personal representatives are generally to be treated by the law in the same manner as trustees, the Commission recommends that a new term be used. Personal representatives are to be called “estate trustees”, whether they are appointed by a will or by the court. Estate trustees may apply to the court for a document, to be called “an estate trustee certificate”, which will authorize them to act on behalf of the estate.

The second major direction in the report is that the Commission opposes the way that the present law treats real property and personal property. For historical reasons, very different rules govern the sale of real property and personal property and the order in which real property and personal property are sold to meet the liabilities of a solvent estate. There is no principled justification for maintaining these differences. In this report, the Commission recommends that there should no longer be any distinction in the way that personalty and realty are treated by the law.

Following an introductory chapter, the Commission examines the office of personal representative in some detail. It considers the principles governing appointment to the office, the powers and duties of personal representatives, their responsibility and liability to others, compensation and reimbursement, and suspension and termination of the office. The Commission recommends that many of the recommendations made in its 1984 *Report on the Law of Trusts* should apply to estate trustees. The Commission also makes recommendations concerning the duty to dispose of the body of the deceased, collect the estate, and pay its debts.

In chapter 3, the Commission considers how beneficiaries are identified—in particular, the rules governing proof of survivorship, proof of death in the case of missing beneficiaries, and unascertained beneficiaries. It makes a series of recommendations that are intended to ensure that the estate is distributed to the persons who are entitled to it.

In chapter 4, the Commission examines a number of substantive and procedural issues dealing with creditors and other claimants of the estate. In the case of insolvent estates, the Commission makes recommendations to rationalize the existing provincial and federal legislation. In the case of solvent estates, the Commission makes proposals to simplify and modernize the unnecessarily complex rules now governing the order in which estate assets are applied to meet the liabilities of the estate. The Commission also clarifies the law governing advertising for creditors, and the procedures available for the processing of claims against the estate. Finally, recommendations deal with certain miscellaneous issues: contingent liabilities; evidence in actions involving estates; the bonding of estate trustees; and exemptions under the *Execution Act* in favour of the family of a deceased debtor.

Chapter 5 deals with the vesting in estate trustees of both personal and real property and their power of sale in relation to that property. The Commission makes two recommendations that would fundamentally change the way that the law treats real property after death. First, it recommends the abolition of the present system under which real property may vest automatically in the persons beneficially entitled; real property will vest in the estate trustees and, except in the case of an order from the court, the only way that title to it may be transferred is by means of a conveyance from the estate trustee named in the estate trustee certificate. Second, the Commission recommends that, subject to the testator providing otherwise in her will, estate trustees should have a general power to sell both real and personal property of the estate. This power may be exercised without notice to any person, including the Official Guardian or the Public Trustee. The Commission also makes recommendations dealing with the distribution of personal and real property to the beneficiaries.

Chapter 6 addresses several discrete issues relating to the role of the Ontario Court (General Division) in estates administration. The Commission recommends a new "filing of accounts" procedure. Under the Commission's recommendations, there will be a formal passing of accounts, with attendances before a judge, only after the accounts are filed and where there is a dispute in connection with the accounts or the conduct of the estate trustees.

B. PROJECTS IN PROCESS

The Judicial Role and Judicial Appointments (1991)

The Ontario Law Reform Commission has published a collection of papers on the judicial role and judicial appointments, entitled *Appointing Judges: Philosophy, Politics and Practice*.

When the Meech Lake Accord gave the provinces the right to submit lists of candidates from which an appointment to the Supreme Court of Canada would be made, the Ontario Law Reform Commission embarked on a project on judicial appointments under the direction of Dean John Whyte, of Queen's University's Faculty of Law. The purpose of the project was to define a process and set of criteria to assist the Government of Ontario in choosing the best candidates.

The Accord was never ratified and the project accordingly lost its immediate rationale. But the question of how to select candidates not only to the Supreme Court, but also to all levels of the judiciary, remains an issue of increasing public interest. The *Canadian Charter of Rights and Freedoms* was probably the greatest stimulus to public attention on the judiciary and its membership. Although judges had always, through their interpretive role, played a role in the development of public policy, the constitutional entrenchment of the Charter transformed the role from a penultimate to an authoritative one. And this in turn focused public scrutiny on judges, the people now empowered to make final judgments about the state's capacity to legislate.

As this collection of papers demonstrates, these developments have heightened public interest not only in the judicial role, but in the qualifications of the people who execute the office. The very meanings of judicial neutrality, competence, and even omniscience have undergone critical reassessment, as have the processes that result in judicial appointment. Respect for judicial independence has been enhanced, as it should be, but so has the demand that the process of selection itself enjoy independence from the vagaries of politics. A more representative judiciary, more sensitive to the pluralistic and diverse values enshrined in the Charter and manifest in our changing society, is intensely urged.

Courts and judges have become the definers and guardians of the relationships between citizen and state set out in the Charter and they have become integral elements within the policy process. In a society of diverse interests and competing values, impartiality is increasingly understood not as a reflection of the status quo, but as a capacity to be genuinely open to the pluralistic views and people Canada represents. No longer are the traditional judicial attributes of knowledge, common sense, civility, and experience sufficient. Judicial decision-making is not the mechanical application of law and precedent to sets of facts. The legitimacy of the judges, and their effectiveness in playing the complex roles we have assigned them, depend on the openness and fairness of their selection, and on their sensitivity to the society which they serve and from which they come.

This volume is designed to explore just these issues. It represents an innovation in publications of the Ontario Law Reform Commission. It does not contain a set of recommendations. Instead, it consists of research and reflection on various aspects of judicial selection, embracing the varied points of view of a number of noted scholars responding to questions posed by the Commission. The broad issues explored in this volume—from philosophical questions about the role of courts in our society, to questions about representation and accountability, and to the specific procedures which might institutionalize and guarantee the values to be achieved in judicial selection—do not easily make for precise recommendations. Rather, with this volume, the Commission is, in accordance with its mandate, hoping to stimulate discussion on a legal issue of fundamental concern to the public.

Neither the Commission nor the authors make conclusive proposals for a particular process of judicial selection; but all endorse wholeheartedly an independent, representative judiciary, however selected, which is fully responsive to the dynamism of the law and the needs of the public it serves.

Exemplary Damages (1991)

In its *Report on Exemplary Damages*, the Ontario Law Reform Commission seeks to accomplish two main objectives. First, it seeks to respond to the arguments made in recent years suggesting that exemplary or punitive damages have contributed to a crisis in the operation of the tort law system, and to the so-called "insurance crisis". Second, it seeks to rationalize the theoretical basis of exemplary damages, to assist in ensuring that they are awarded in accordance with clearly articulated principles.

The Project Director was Professor Bruce Feldthusen, of the Faculty of Law, University of Western Ontario. The final report was completed by Jody Morrison of the Commission's legal staff.

Exemplary damages are awarded primarily to deter and punish the defendant for reprehensible conduct. Over the past several years, a great deal of concern has been expressed that exemplary damages have contributed to a perceived crisis in the operation of both the tort system, and the insurance industry. The specific concerns expressed include the following: (1) that exemplary damages are being claimed, and awarded, much more frequently than they were in the past; (2) that they are being claimed, and awarded, in cases involving increasingly diverse causes of action; (3) that they are being awarded in larger amounts than they once were; (4) that they are being awarded in cases in which they are not justified, or in excessive amounts; and (5) that spurious claims for exemplary damages may have an

undesirable effect on the settlement process, by coercing defendants to settle claims, or settle claims for higher amounts, than they would otherwise.

In order to investigate these concerns, and to develop a statistical foundation for this report, an empirical study was undertaken on behalf of the Commission. On the basis of this and other research conducted in connection with the report, the Commission concludes that there is no evidence of a "crisis" caused by the existing law of exemplary damages. The Commission also concludes that, given the existing legal principles in Ontario, it is unlikely that such a crisis would occur here.

The Commission does, however, make a number of recommendations for reform of the law of exemplary damages, designed to provide a clear, consistent and rational basis for such damages. In order to accomplish this objective, the Commission adopts a functional approach, isolating the three functions, or rationales, typically advanced to justify the award of exemplary damages: (1) compensation; (2) punishment; and (3) deterrence.

The Commission attempts to clarify the present law by making the goals sought to be achieved by an award of exemplary damages more explicit, and by identifying specifically the policy goals to which exemplary damages ought to be required to respond.

Chapter 2 summarizes the present law of exemplary damages in Canada, England, and the United States. It also contains a discussion of some of the significant differences between the law in Canada and the United States. Chapter 3 provides an outline of the arguments ordinarily advanced for and against the award of exemplary damages. The empirical information available about exemplary damages in Ontario and the United States is summarized in chapter 4.

One obvious approach suggested by the functional analysis adopted by the Commission is to exclude entirely the compensatory function from exemplary damages. The courts have already attempted to isolate the compensatory function by distinguishing aggravated damages from exemplary damages. Traditionally, aggravated damages compensate the plaintiff for injuries to pride and dignity resulting from the defendant's exceptional conduct, while exemplary or punitive damages are intended to punish and deter the defendant. Therefore, the analysis in chapter 5 begins not with exemplary damages, but with aggravated damages. The Commission recommends that injuries to pride and dignity should be compensated according to ordinary compensatory principles. Specifically, the Commission recommends that the court should be empowered to award compensatory damages for injuries to pride and dignity as part of the ordinary global award of damages for non-pecuniary loss, and that such damages should be available without proof of

exceptional conduct. Our recommendations are designed to distinguish more sharply the compensatory function from deterrence and punishment, and so to clarify the subsequent analysis of exemplary damages.

Chapter 6 deals with the general case for exemplary damages as a supplement to the criminal law. Historically, the primary function of exemplary damages has been punishment, and the Commission recommends that it remain so. The Commission endorses the concept of civil punishment in exceptional cases as a supplement to the criminal law, and supports the symbolic function of punitive damages. It recommends that exemplary damages for the purpose of punishment should continue to be available in Ontario, and should be referred to as "punitive damages", a term deliberately adopted to convey more accurately the purpose of the award.

The Commission further recommends that punitive damages should be awarded only where the defendant has advertently committed a wrongful act deserving of punishment, and where the defendant's conduct was exceptional. It also recommends that the size of an award of punitive damages should be proportionate to the gravity of the act deserving of punishment. Finally, the Commission makes proposals respecting a variety of issues, including the quantification of punitive damages, the burden of proof, vicarious liability, concurrent wrongdoers, and the survival of claims.

In chapter 7 the Commission deals with an aspect of "tort for profit", and recommends that where a plaintiff chooses the remedy of restitution, rather than suing in tort, he or she should also be entitled to claim punitive damages.

In chapter 8, special issues that pertain to negligence, nuisance, and equitable wrongs are discussed. The Commission recommends that punitive damages should be available, in accordance with the earlier proposals, in cases of both negligence and nuisance. In chapter 9 the Commission considers the unique case for imposing punitive damages on statutory public authorities, and recommends that public authorities should remain independently liable for punitive damages where they knowingly exceed their legal authority and injure another tortiously. Finally, in chapter 10, the Commission discusses extra damages in contract, and concludes that it would be premature to make recommendations for reform in this context.

Adjudication of Workplace Disputes

This project is being directed by Professor Bernard Adell, of the Faculty of Law, Queen's University. The purpose is to see whether, in structure and

process, the adjudication of workplace disputes is taking place as effectively and expeditiously as possible.

In its project, the Commission will examine the following: Labour Relations Board; grievance arbitration; *Employment Standards Act* referees; appeals conducted by the Director of Appeals under the *Occupational Health and Safety Act*; *Ontario Human Rights Code* boards of inquiry; the Pay Equity Commission; the Ontario Public Service Labour Relations Tribunal; and the Grievance Settlement Board.

In addition, the Commission's study will examine whether aspects of administrative law are in need of reform as they relate to workplace disputes adjudication.

The Law of Testing: HIV/AIDS; Drug and Alcohol; Genetic and Psychological

The Ontario Law Reform Commission has embarked on four studies of the law of testing. More specifically, the Commission is examining the areas of HIV/AIDS, drug and alcohol, genetic, and psychological testing in a number of different contexts, like the workplace, schools, and other institutional settings. The projects will consider when and how to balance an individual's right to privacy and the public's right to information.

Public Inquiries and Coroners' Inquests

The Supreme Court of Canada's recent decision in *Starr v. Houlden* has highlighted many longstanding concerns about the role that public inquiries play in our justice system, whether as policy-making instruments or as fact-finding, investigatory devices, or indeed both. As a result, the Commission has initiated a project on the role of provincial inquiries appointed under the *Public Inquiries Act*. In addition, the project will consider the role of inquests held under the *Coroners Act*. In respect of both public inquiries and coroners' inquests, the project will examine the tension between pursuit of the public interest and, under certain circumstances, the protection of persons suspected of wrongdoing. The Project Director is Professor Kent Roach, of the Faculty of Law, University of Toronto.

Child Witnesses

The Ontario Law Reform Commission has currently undertaken the study of child witnesses in Ontario's civil system. The project is being directed by Ronda Bessner, Counsel at the Commission.

The Commission will first examine current psychological studies on the reliability of children's testimony. Some of the issues which the Commission is examining, in light of these studies, are what the competency requirements ought to be for child witnesses, whether the corroboration requirement for the unsworn testimony of children ought to be abolished, whether a statutory hearsay exception ought to be created respecting the hearsay statements of children, and whether statutory provisions should exist which permit children to offer testimony by different means.

Charities

Following a reference from the Attorney General, the Commission commenced a study of the law of charities in Ontario. The Project Director is Professor David Stevens, of the Faculty of Law, McGill University.

In this project, the Commission is examining the status, legal form, sources and uses of revenue, and supervision of charities. Among the specific issues canvassed are the following: (1) the type of activity that should benefit from the advantages accorded to charities; (2) whether organizations aimed at accomplishing political purposes should be considered charitable; (3) whether it is appropriate that charities be created by means of different legal forms (trusts, corporations, and unincorporated associations); (4) whether the investment powers of charities should be subject to restriction; (5) whether charities should be entitled to own for-profit organizations or to carry on business directly; (6) whether charitable fundraising activities should be controlled; and (7) who should be responsible for regulating charities, and by what means.



APPENDIX A

REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report
Report No. 1 [The Rule Against Perpetuities]	1965
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966
Report No. 2 [The Wages Act: Assignment of Wages]	1965
Report No. 3 on Personal Property Security Legislation	1965
Report No. 3A on Personal Property Security Legislation	1966
Report on The Evidence Act: Admissibility of Business Records	1966
Report on The Mechanics' Lien Act	1966
Supplementary Report on The Mechanics' Lien Act	1967
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966
Report on The Execution Act: Exemption of Goods from Seizure	1966
Report on the Law of Condominium	1967
Report on the Basis for Compensation on Expropriation	1967
Report on the Limitation Period for Actions under The Sandwich, Winsor and Amherstburg Railway Act, 1930	1968
Annual Report 1967	1968
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968
Report on The Protection of Privacy in Ontario	1968
Report on Section 183 of The Insurance Act	1968
Report on Trade Sale of New Houses	1968
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968

Title	Date of Report
Report on the Status of Adopted Children	1969
Second Annual Report 1968	1969
Report on the Age of Majority and Related Matters	1969
Report on the Status of Adopted Children	1969
Report on Family Law, Part I: Torts	1969
Report on Section 20 the The Mortgages Act	1970
Report on Family Law, Part II: Marriage	1970
Third Annual Report 1969	1970
Report on Actions Against Representatives of Deceased Persons	1970
Report on the Coroner System in Ontario	1971
Report on Sunday Observance Legislation	1971
Report on Land Registration	1971
Fourth Annual Report 1970	1971
Report on The Change of Name Act	1971
Report on The Mortgages Act, Section 16	1971
Report on Development Control	1971
Report on Powers of Attorney	1972
Report on Occupiers' Liability	1972
Report on Consumer Warranties and Guarantees in the Sale of Goods	1972
Report on Review of Part IV of The Landlord and Tenant Act	1972
Fifth Annual Report 1971	1972
Report on the Non-Possessory Repairman's Lien	1972
Report on the Administration of Ontario Courts, Part I	1973
Sixth Annual Report 1972	1973
Report on the Administration of Ontario Courts, Part II	1973
Report on Family Law, Part III: Children	1973
Report on The Solicitors Act	1973
Report on Motor Vehicle Accident Compensation	1973
Report on the Administration of Ontario Courts, Part III	1973
Report on Family Law, Part IV: Family Property Law	1974

Title	Date of Report
Report on Family Law, Part V: Family Courts Seventh Annual Report 1973	1974 1974
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974
Eighth Annual Report 1974	1975
Report on Family Law, Part VI: Support Obligations	1975
Report on Mortmain, Charitable Uses and Religious Institutions	1976
Report on Landlord and Tenant Law	1976
Report on the Law of Evidence	1976
Ninth Annual Report 1975	1976
Report on Changes of Name	1976
Report on the Impact of Divorce on Existing Wills	1977
Tenth Annual Report 1976	1977
Eleventh Annual Report 1977	1978
Report on Sale of Goods	1979
Twelfth Annual Report 1978	1979
Report on Products Liability	1979
Thirteenth Annual Report 1979	1980
Report on the Enforcement of Judgment Debts and Related Matters, Part I	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981
Fourteenth Annual Report 1980-81	1981
Report on Witnesses Before Legislative Committees	1981
Report on Class Actions	1982
Fifteenth Annual Report 1981-82	1982
Report on the Enforcement of Judgment Debts and Related Matters, Part IV	1983
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983
Report on Powers of Entry	1983
Sixteenth Annual Report 1982-83	1983
Report on the Law of Trusts	1983
Seventeenth Annual Report 1983-84	1984

Title	Date of Report
Report on Human Artificial Reproduction and Related Matters	1985
Twentieth Anniversary Report 1984-85	1985
Twenty-First Annual Report 1985-86	1986
Report on Political Activity, Public Comment and Disclosure by Crown Employees	1986
Report on Amendment of the Law of Contract	1987
Report on the Law of Mortgages	1987
Twenty-Second Annual Report	1987
Report on Compensation for Personal Injuries and Death	1987
Report on Contribution Among Wrongdoers and Contributory Negligence	1988
Report on Timesharing	1988
Twenty-Third Annual Report 1987-88	1988
Study Paper on Wrongful Interference with Goods	1989
Report on the Law of Standing	1989
Report on Covenants Affecting Freehold Land	1989
Report on Liability of the Crown	1989
Report on Damages for Environmental Harm	1990
Report on the Basis of Liability for Provincial Offences	1990
Report on Administration of Estates of Deceased Persons	1991
Report on Exemplary Damages	1991
1991 Ontario Law Reform Commission Report	1991

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APPENDIX B

IMPLEMENTATION OF THE REPORTS OF THE ONTARIO LAW REFORM COMMISSION

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report No. 1 [The Rule Against Perpetuities]	1965	<i>The Perpetuities Act, 1966,</i> S.O. 1966, c. 113
Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities]	1966	<i>do.</i>
Report No. 2 [The Wages Act: Assignment of Wages]	1965	<i>The Wages Amendment Act,</i> 1968, S.O. 1968, c. 142
Report No. 3 on Personal Property Security Legislation	1965	<i>The Personal Property Security Act, 1967, S.O.</i> 1967, c. 72
Report No. 3A on Personal Property Security Legislation	1966	<i>do.</i>
Report on The Evidence Act: Admissibility of Business Records	1966	<i>The Evidence Amendment Act, 1966, S.O. 1966, c. 51,</i> s. 1
Report on The Mechanics' Lien Act	1966	<i>The Mechanics' Lien Act,</i> 1968-69, S.O. 1968-69, c. 65
Supplementary Report on The Mechanics' Lien Act	1967	<i>do.</i>
Report on the Proposed Extension of Guarantor's Liability on Construction Bonds	1966	See <i>The Mechanics' Lien Amendment Act, 1975,</i> S.O. 1975, c. 43 <i>The Ministry of Transportation and Communications Creditors Payment Act,</i> 1975, S.O. 1975, c. 44 <i>The Public Works Creditors Payment Repeal Act, 1975, S.O.</i> 1975, c. 45
Report on The Execution Act: Exemption of Goods from Seizure	1966	<i>The Execution Amendment Act, 1967, S.O. 1967, c. 26</i>
Report on the Law of Condominium	1967	<i>The Condominium Act,</i> 1967, S.O. 1967, c. 13

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Basis for Compensation on Expropriation	1967	<i>The Expropriations Act, 1968-69, S.O. 1968-69, c. 36</i>
Report on the Limitation Period for Actions under The Sandwich, Winsor and Amherstburg Railway Act, 1930	1968	<i>The Sandwich Windsor and Amherstburg Railway Amendment Act, 1968, S.O. 1968, c. 120</i>
Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187	1968	<i>Divorce Act, S.C. 1967-68, c. 24, s. 26</i>
Report on the Proposed Adoption in Ontario of The Uniform Wills Act	1968	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> <i>See The Registry Amendment Act, 1978, S.O. 1978, c. 8, s. 1</i>
Report on The Protection of Privacy in Ontario	1968	<i>See The Consumer Reporting Act, 1973, S.O. 1973, c. 97</i>
Report on Trade Sale of New Houses	1968	<i>See The Ontario New Home Warranties Plan Act, 1976, S.O. 1976, c. 52</i>
Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies	1968	<i>The Landlord and Tenant Amendment Act, 1968-69, S.O. 1968-69, c. 58</i>
Report on Limitation of Actions	1969	<i>See The Highway Traffic Amendment Act (No. 2), 1975, S.O. 1975, c. 37</i> <i>The Fatal Accidents Amendment Act, 1975, S.O. 1975, c. 38</i> <i>The Trustee Amendment Act, 1975, S.O. 1975, c. 39</i>
Report on the Age of Majority and Related Matters	1969	<i>The Age of Majority and Accountability Act, 1971, S.O. 1971, c. 98</i>
Report on the Status of Adopted Children	1969	<i>The Child Welfare Amendment Act, 1970, S.O. 1970, c. 96, s. 23</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Family Law, Part I: Torts	1969	<i>The Family Law Reform Act, 1978</i> , S.O. 1978, c. 2 (partial implementation)
Report on Section 20 of The Mortgages Act	1970	<i>The Mortgages Amendment Act, 1970</i> , S.O. 1970, c. 54, s. 1
Report on Family Law, Part II: Marriage	1970	<i>The Civil Rights Statute Law Amendment Act, 1971</i> , S.O. 1971, c. 50, s. 55 (partial implementation)
		<i>The Marriage Act, 1977</i> , S.O. 1977, c. 42
Report on Actions Against Representatives of Deceased Persons	1970	<i>The Trustee Amendment Act, 1971</i> , S.O. 1971, c. 32, s. 2
Report on the Coroner System in Ontario	1971	<i>The Coroners Act, 1972</i> , S.O. 1972, c. 98
Report on Sunday Observance Legislation	1971	<i>The Retail Business Holidays Act, 1975</i> , S.O. 1975 (2nd Session), c. 9 <i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 134
Report on Land Registration	1971	See <i>The Corporations Tax Amendment Act (No. 2), 1979</i> , S.O. 1979, c. 89 <i>Land Registration Reform Act, 1984</i> , S.O. 1984, c. 32
Report on The Change of Name Act	1971	<i>The Change of Name Amendment Act, 1972</i> , S.O. 1972, c. 44 <i>Change of Name Act, 1986</i> , S.O. 1986, c. 7
Report on Development Control	1971	<i>The Planning Amendment Act, 1973</i> , S.O. 1973, c. 168, s. 10
Report on Powers of Attorney	1972	<i>The Powers of Attorney Act, 1979</i> , S.O. 1979, c. 107 <i>Powers of Attorney Amendment Act, 1983</i> , S.O. 1983, c. 74

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Mental Health Amendment Act, 1983, c. 75</i>
Report on Occupiers' Liability	1972	<i>The Occupiers' Liability Act, 1980, S.O. 1980, c. 14</i>
Report on Review of Part IV of The Landlord and Tenant Act	1972	<i>The Landlord and Tenant Amendment Act, 1972, S.O. 1972, c. 123</i>
Report on the Non-Possessory Repairman's Lien	1972	<i>Repair and Storage Liens Act, 1989, S.O. 1989, c. 17 (partial implementation)</i>
Report on the Administration of Ontario Courts, Part I	1973	See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Judicature Amendment Act (No. 2), 1977, S.O. 1977, c. 51, s. 9</i> <i>Courts of Justice Act, 1984, S.O. 1984, c. 11, ss. 19 and 25</i>
Report on the Administration of Ontario Courts, Part II	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 162</i> See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i>
Report on Family Law, Part III: Children	1973	<i>The Child Welfare Amendment Act, 1975, S.O. 1975, c. 1 (partial implementation)</i> <i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40 (partial implementation)</i> <i>The Children's Law Reform Act, 1977, S.O. 1977, c. 41 (partial implementation)</i> See <i>Children's Law Reform Amendment Act, 1982, S.O. 1982, c. 20</i>
Report on The Solicitors Act	1973	<i>Courts of Justice Act, 1984, S.O. 1984, c. 11, s. 214(6)</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on the Administration of Ontario Courts, Part III	1973	<i>The Judicature Amendment Act, 1975, S.O. 1975, c. 30</i> (partial implementation) See <i>The Administration of Courts Project Act, 1975, S.O. 1975, c. 31</i> <i>The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52</i> (partial implementation)
Report on Family Law, Part IV: Family Property Law	1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> (partial implementation) <i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i> (partial implementation) <i>Family Law Act, 1986, S.O. 1986, c. 4</i> (partial implementation) See <i>The Land Titles Amendment Act, 1978, S.O. 1978, c. 7</i> <i>The Registry Amendment Act, 1978, S.O. 1978, c. 8</i>
Report on Family Law, Part V: Family Courts	1974	See <i>The Unified Family Court Act, 1976, S.O. 1976, c. 85</i> <i>The Children's Probation Act, 1978, S.O. 1978, c. 41</i> (partial implementation)
Report on the International Convention Providing a Uniform Law on the Form of the International Will	1974	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 42</i>
Report on Family Law, Part VI: Support Obligations	1975	<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40</i> (partial implementation)

Title	Date of Report	Original Legislation Concerning Commission Proposals
Report on Mortmain, Charitable Uses and Religious Institutions	1976	<i>The Family Law Reform Act, 1978, S.O. 1978, c. 2</i>
		<i>The Religious Organizations' Lands Act, 1979, S.O. 1979, c. 45</i>
		<i>The Anglican Church of Canada Act, 1979, S.O. 1979, c. 46</i>
		<i>The Registry Amendment Act, 1979, S.O. 1979, c. 94, s. 17</i>
		<i>Charities Accounting Amendment Act, 1982, S.O. 1982, c. 11</i>
Report on Landlord and Tenant Law	1976	<i>Mortmain and Charitable Uses Repeal Act, 1982, S.O. 1982, c. 12, s. 1(1)</i>
		<i>The Residential Tenancies Act, 1979, S.O. 1979, c. 78 (partial implementation)</i>
Report on Changes of Name	1976	<i>The Change of Name Amendment Act, 1978, S.O. 1978, c. 28</i>
		<i>The Vital Statistics Amendment Act, 1978, S.O. 1978, c. 81, s. 1 (partial implementation)</i>
		<i>Change of Name Act, 1986, S.O. 1986, c. 7 (partial implementation)</i>
		<i>Vital Statistics Amendment Act, 1986, S.O. 1986, c. 9 (partial implementation)</i>
		<i>The Succession Law Reform Act, 1977, S.O. 1977, c. 40, s. 17(2)</i>
Report on the Impact of Divorce on Existing Wills	1977	
Report on the Enforcement of Judgment Debts and Related Matters, Part II	1981	<i>Wages Amendment Act, 1983, S.O. 1983, c. 68 (partial implementation)</i>
		<i>Proceedings Against the Crown Amendment Act, 1983, S.O. 1983, c. 88</i>

Title	Date of Report	Original Legislation Concerning Commission Proposals
		<i>Courts of Justice Act, 1984</i> , S.O. 1984, c. 11, s. 177 (partial implementation)
		Rules of Civil Procedure, O. Reg. 560/84, r. 60 (partial implementation)
Report on the Enforcement of Judgment Debts and Related Matters, Part III	1981	Rules of Civil Procedure, O. Reg. 560/84, r. 60.07(16) and (17)
Report on the Enforcement of Judgment Debts and Related Matters, Part V	1983	<i>Creditors' Relief Amendment Act, 1985</i> , S.O. 1985, c. 1 (partial implementation)
Report on Compensation for Personal Injuries and Death	1987	<i>Courts of Justice Amendment Act, 1989</i> , S.O. 1989, c. 67 (partial implementation)

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APPENDIX C

JUDICIAL AND ACADEMIC REFERENCES TO REPORTS OF THE ONTARIO LAW REFORM COMMISSION*

Report No. 1 [The Rule Against Perpetuities] (1965)

Re Tilbury West Public School Board and Hastie, [1966] 2 O.R. 20

Report No. 3 on Personal Property Security Legislation (1965)

Harvey Hubbell Canada Inc. v. Thornhurst Corp. (1989), 69 O.R. (2d) 53

Bank of Nova Scotia v. McIvor et al. (1986), 57 O.R. (2d) 501

Report on The Mechanics' Lien Act (1966)

National Defence Credit Union Ltd. v. Labine, [1987] O.J. No. 1366

George Wimpey Canada Ltd. v. Peelton Hills Ltd. et al. (1982), 35 O.R. (2d) 787

Otis Elevator Co. Ltd. et al. v. Commonwealth Holiday Inns of Canada Ltd. et al. (1975), 8 O.R. (2d) 297, 57 D.L.R. (3d) 681

Supplementary Report on The Mechanics' Lien Act (1967)

George Wimpey Canada Ltd. v. Peelton Hills Ltd. et al. (1982), 35 O.R. (2d) 787, 132 D.L.R. (3d) 732

Report on The Law of Condominium (1967)

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Frontenac Condominium Corp. No. 1 v. Joe Macciocchi & Sons Ltd. (1974), 3 O.R. (2d) 331, 45 D.L.R. (3d) 347

* This is a non-exhaustive listing of articles and cases in which the Commission's reports have been reviewed and cited.

Re Lambert Island Ltd. and Attorney-General of Ontario, [1972] 2 O.R. 659, (1972), 26 D.L.R. 391

Report on the Basis for Compensation on Expropriation (1967)

Re City of Windsor and Larsen et al. (1980), 29 O.R. (2d) 669, 114 D.L.R. (3d) 477

Re Laidlaw and Municipality of Metropolitan Toronto, [1978] 2 S.C.R. 736, 87 D.L.R. (3d) 161

Report on the Proposed Adoption in Ontario of The Uniform Wills Act (1968)

Re Nicholls (1987), 57 O.R. (2d) 763, 34 D.L.R. (4th) 321

Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies (1968)

Re Boyd and Earl & Jennie Lohn Ltd. (1984), 47 O.R. (2d) 111, 11 D.L.R. (4th) 265

Reference re Residential Tenancies Act (1980), 26 O.R. (2d) 609, 105 D.L.R. (3d) 193

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Re Ontario Teachers' Pension Plan Board and York University (1990), 74 O.R. (2d) 714, 72 D.L.R. (4th) 253

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West End Construction Ltd. et al. v. Ontario Human Rights Commission et al. (1989), 62 D.L.R. (4th) 329, 70 O.R. (2d) 133

Alberta v. Buys et al. (1989), 59 D.L.R. (4th) 677

Cementation Co. (Canada) v. American Home Assurance Co., [1989] B.C.J. No. 1048

Colangelo v. Mississauga (City) (1988), 66 O.R. (2d) 29

Radelja v. Canadian General Insurance Co., (1988), 29 C.C.L.I. 168
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 (1983), 58 N.S.R. (2d) 369, 123 A.P.R. 369
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Schrenk v. Schrenk et al. (1982), 36 O.R. (2d) 480

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Canestraro et al. v. Larade et al., [1972] 3 O.R. 382, (1972), 28 D.L.R. (3d) 290

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Report on Sunday Observance Legislation (1971)

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Report on Family Law, Part IV: Family Property Law (1974)

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Regina v. Stewart et al. (1981), 33 O.R. (2d) 1, 125 D.L.R. (3d)
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APPENDIX D

ONTARIO LAW REFORM COMMISSION ADVISORY BOARD

Margaret Atwood

Joanne Campbell
General Manager
Metro Toronto Housing Co. Ltd.

Mr. Justice Marvin Catzman
Court of Appeal of Ontario

Marshall Cohen
C.E.O.
The Molson Companies Ltd.

Anne R. Dubin
Tory, Tory, DesLauriers & Binnington

Her Honour Judge Mary F. Dunbar
Ontario Court of Justice
(Provincial Division)

Professor Margrit Eichler
Sociology Department
The Ontario Institute for Studies in Education

Catherine Frazee
Chief Commissioner
Ontario Human Rights Commission

Robert Fulford

Professor Phillipe Garigue
International Studies,
Glendon College

Edward L. Greenspan
Greenspan, Rosenberg

Jack D. Ground
Osler, Hoskin & Harcourt

Madame Justice Donna J. Haley
Ontario Court of Justice
(General Division)

Wilson Head
Past President
Urban Alliance on Race Relations

Gordon Henderson
Gowling, Strathy & Henderson

Peter Herrndorf
Publisher
Toronto Life Magazine

Peter W. Hogg
Professor of Law,
Osgoode Hall Law School

Dr. Ron Ianni
President
University of Windsor

Roberta Jamieson
Ombudsman

John Jennings
Kingsmill, Ross, McBride

Stephen Lewis

Marie Marchand
Project Co-ordinator
Women into Apprenticeship

Associate Chief Justice R. Roy McMurtry
Ontario Court of Justice
(General Division)

Associate Chief Justice John Morden
Court of Appeal of Ontario

Mr. Justice Ed Saunders
Ontario Court of Justice
(General Division)

Graham Scott
McMillan, Binch

James M. Spence
Treasurer
Law Society of Upper Canada

Janet Stewart
Lerner & Associates

Professor Katherine Swinton
Faculty of Law
University of Toronto

Associate Chief Judge Robert J.K. Walmsley
Special Adviser to Chief Judge
Ontario Court of Justice
(Provincial Division)

APPENDIX E

GROUPS AND ORGANIZATIONS CONSULTED BY THE ONTARIO LAW REFORM COMMISSION

In its projects, the Ontario Law Reform Commission consults regularly with members of the Bench, the Bar, the academic community, provincial and federal government ministries and agencies, and various persons, organizations and governmental institutions in other jurisdictions. In addition to the foregoing, during 1989-91 the Commission consulted with a wide range of groups and organizations, including the following:

Addiction Research Foundation
Adjudication Services Limited
Adventist Development and Relief Agency
Advocacy Resource Centre for the Handicapped
Aftermath: Self Help for Families of Sexually Abused Children
AIDS Action Now!
The AIDS Committee of Ottawa
AIDS Committee of Toronto
Alliance for a Drug-Free Canada
Alliance for Justice (Washington D.C.)
ALS Society
Anishnawbe Health Toronto
Anselma House
Association of Canadian Financial Corporations
Association of Local Official Health Agencies
Barrie District Rape Crisis Line
Baycrest Centre for Geriatric Care
Bereaved Families of Ontario
Bethesda Programs
Canadian Association for Adult Education
Canadian Association of Health and Safety Physicians
Canadian Association on Charitable Gift Annuities

Canadian Bankers Association
 Canadian Bible Society
 Canadian Centre for Occupational Health and Safety
 Canadian Centre for Philanthropy
 Canadian Citizenship Federation
 Canadian Civil Liberties Association
 Canadian Conference of Catholic Bishops
 Canadian Conference of the Arts
 Canadian Council of Churches
 Canadian Development Investment Corporation
 Canadian Environmental Law Association
 Canadian Federation of Labour
 Canadian Forestry Association
 Canadian Foundation for Children, Youth and the Law
 Canadian 4-H Council
 Canadian Institute of Chartered Accountants
 Canadian Life and Health Insurance Association Inc.
 Canadian Manufacturers' Association
 Canadian Medical Association
 Canadian Mental Health Association
 Canadian Organization for Development through Education
 Canadian Red Cross Society
 Canadian Rights and Liberties Federation
 Canadian Shaare Zedek Hospital Foundation
 Canadian Wildlife Federation
 Casey House Hospice
 Catholic Children's Aid Society
 Catholic Church Extension Society of Canada
 Central Ontario Industrial Relations Institute
 Chedoke-McMaster Hospitals

Children's Aid Foundation
Children's Aid Society of Metropolitan Toronto
Children's Hospital of Eastern Ontario
Children's Services Branch, Ontario Ministry of Community and Social Services
Chinese Legal Clinic
Christian Blind Mission International Canada
Christian Children's Fund of Canada
Christian Horizons
Christian Reformed World Relief Committee
Christian Stewardship Services
COFTM/Centre Francophone
College of Nurses of Ontario
Community Foundation of Ottawa-Carleton
Community Outreach in Education Foundation
Conrad Grebel College
Council of Ontario Universities
Council for Business and the Arts in Canada
Council of Elizabeth Fry Societies of Ontario
Counselling Foundation of Canada
Crown Employees' Grievance Settlement Board
Delcrest Centre
Department of Public Health, City of Toronto
Department of Public Health Services, Regional Municipality of Hamilton-Wentworth
Donner Canadian Foundation
Downtown Churchworkers' Association
Eaton Foundation
Elizabeth Fry Society of Toronto
Epilepsy Canada
Evangelical Fellowship of Canada
Family Service Association of Metropolitan Toronto

Federal Centre for AIDS
Foster Parents Plan of Canada
Freeport Hospital Health Care Village
Goodwill Industries of Toronto
Guelph Spring Festival
Haemophilia Services
Halton Children's Aid Society
Halton Regional Health Department
Harambee Foundation
Hassle Free Clinic
Heart and Stroke Foundation of Ontario
Hospital for Sick Children Foundation
Hotel Dieu, Kingston
Human Resources Professionals Association of Ontario
Huntington University
Information and Privacy Commissioner/Ontario
Institute for Research on Public Policy
Institute for the Prevention of Child Abuse
Institute of Donation and Public Affairs Research
Inter Pares
J. A. Coombs Ltd.
J. D. Griffin Adolescent Centre
J. P. Bickell Foundation
Jackman Foundation
Jewish Community Services
Junior League of Toronto
Kerry's Place
Kinark Child and Family Services
Laidlaw Foundation
Lakehead Social Planning Council

Le Théâtre du Nouvel-Ontario Inc.
London Family Court Clinic
Lung Association
Lutherwood Child and Family Foundation
Max Bell Foundation
McGill Centre for Medicine, Ethics and Law
Metro Toronto Civic Employees Union, Local 43
Metropolitan Toronto Community Foundation
Metropolitan Toronto Special Committee on Child Abuse
Metropolitan Toronto Community Foundation
Metropolitan Toronto Police
Motor Transport Industrial Relations Bureau of Ontario (Inc)
Mount Sinai Hospital Foundation
N'Swakamok Native Friendship Centre
Office of the Official Guardian, Ontario Ministry of the Attorney General
Office of the Public Trustee, Ontario Ministry of the Attorney General
Ontario Arts Council
Ontario Association of Children's Aid Societies
Ontario College of Pharmacists
Ontario College of Physicians and Surgeons
Ontario Council of Teaching Hospitals
Ontario Dental Association
Ontario Federation of Labour
Ontario Foundations Committee
Ontario Heritage Foundation
Ontario Hospital Association
Ontario Human Rights Commission
Ontario Labour Relations Board
Ontario March of Dimes
Ontario Medical Association

Ontario Monument Builders Association
Ontario Nurses Association
Ontario Pharmacists' Association
Ontario Public Service Labour Relations Tribunal
Ontario Teachers' Federation
Ontario Public School Teachers' Federation
Ottawa Valley Autistic Homes
Parkwood Hospital
Pay Equity Commission
Pay Equity Hearings Tribunal
Perth Foundation for the Enrichment of Education
Peterborough Community Forum on Child Abuse
Physicians' Services Incorporated Foundation
Pickering College
Provincial Building and Construction Trades Council of Ontario
Revenue Canada, Registration Directorate, Charities Division
Richard and Jean Ivey Fund
Roman Catholic Episcopal Corporation, Archdiocese of Toronto
Ryerson Polytechnical Institute
St. Joseph's Health Care Foundation
St. Michael's Hospital, Toronto
Salvation Army
Second Mile Club of Toronto
Senior Peoples Resources in North Toronto
Sir Stanford Fleming College
Social Planning Council of Kitchener-Waterloo
Social Planning Council of Metropolitan Toronto
Social Planning Council of Peel
Street Health
Street Outreach Services

Sunnybrook Foundation
Sunnybrook Hospital
Superior Memorials
Support and Custody Enforcement Branch, Ontario Ministry of the Attorney General
Surrey Place Centre
Suspected Child Abuse and Neglect Program, Hospital for Sick Children
Theatre Direct Canada
Toronto AIDS Drop-In Centre
Toronto Theatre Alliance
Toronto Workers' Health & Safety Legal Clinic
Trillium Foundation (Ontario)
TVOntario
Unicef Canada
United Way of Greater Toronto
University Hospital, London
Upper Canada College
Victim/Witness Program, Ontario Ministry of the Attorney General
Victoria Order of Nurses (Ontario)
Victoria Order of Nurses for Canada
Vision Institute
Voice for Hearing Impaired Children
Voluntary Action Directorate, Department of the Secretary of State of Canada
War Amputations of Canada
Wesway
Women's Legal Education and Action Fund (LEAF)
YMCA of Metropolitan Toronto
Young Naturalist Foundation
YWCA of Canada
YWCA of Kitchener-Waterloo

APPENDIX F

OFFICERS AND STAFF

ONTARIO LAW REFORM COMMISSION

Chair	Rosalie S. Abella, BA, LLB
Vice Chair	Richard E.B. Simeon, Ph.D
Commissioners	Earl A. Cherniak, QC, BA, LLB J. Robert S. Prichard, MBA, LLM (to July 31, 1990) John D. McCamus, MA, LLM (from August 1, 1990) Margaret A. Ross, BA (Hon), LLB
Counsel	Melvin A. Springman, MA, MSc, LLB, General Counsel and Director of Research Larry M. Fox, LLB, Senior Counsel Judith A. Bellis, BA, LLB J. Jody Morrison, BA (Hon), LLM Ronda F. Bessner, BA (Hon), BCL, LLB, LLM Christine B. Henderson, BA, LLB
Visiting Scholars	Chief Justice Edward D. Bayda Saskatchewan Court of Appeal (1990) Professor Peter Hogg Osgoode Hall Law School (1991)
Secretary and Administrative Officer	Anne McGarrigle, LLB
Administrative Assistant	Beverley G. Woodley
Secretary to Chair	Tina Afonso
Librarian	Christopher Hughes
Secretary to General Counsel	D. M. Halyburton
Secretary to Administrative Officer	Mary M. O'Hara
Secretaries to Counsel	Cora Calixterio Sharon Hattori

The past three years has seen significant changes in the membership and staff of the Ontario Law Reform Commission.

On March 20, 1989, James R. Breithaupt, the Chair of the Ontario Law Reform Commission, was appointed Chair of the Commercial Registration Appeals Tribunal. The Commission wishes to extend to Mr. Breithaupt its best wishes and warmest congratulations on his appointment to this office, in which he will undoubtedly continue his dedicated service to the people of Ontario.

Mr. Breithaupt had been Chair of the Ontario Law Reform Commission since November 1, 1984. During his tenure as Chair, the Commission published a number of Reports, dealing with such diverse matters as human artificial reproduction, political activity and public comment by Crown employees, contribution among wrongdoers, and compensation for personal injury and death.

In March 1989, H. Allan Leal retired as Vice Chair of the Commission. Dr. Leal became a founding member of the Ontario Law Reform Commission in 1964, serving as its Chairman from 1966 to 1977, and as its Vice Chairman from 1981 to 1989. Dr. Leal's prodigious knowledge of the law and commitment to law reform were reflected in Commission reports addressing a broad spectrum of social and legal issues. Important pieces of legislation, dealing with family law, landlord and tenant, condominiums, courts administration, to name but a few, were based on reports published under his wise stewardship. As Vice Chairman, Dr. Leal continued to play an indispensable role in the life of the Commission.

On July 31, 1990, Dean J. Robert S. Prichard, of the Faculty of Law, University of Toronto, resigned as a member of the Ontario Law Reform Commission to assume his new position as President of the University of Toronto. We wish to congratulate him on his appointment to this office, which he will no doubt discharge with the same vigour and brilliance that he brought to the Commission. Dean Prichard had served as a Commissioner since March, 1986.

In July, 1988, Ms. M. Patricia Richardson, Counsel to the Commission — the position is now known as General Counsel and Director of Research — left the Commission to become Vice Chair of the Automobile Insurance Board. Ms. Richardson joined the Commission as a Legal Research Officer in April, 1974, and became Counsel in December, 1976. Her dedication and the excellence of her contribution to the work of the Commission are evident in numerous reports published during this period.

On November 30, 1989, Mrs. Stephanie Hlynka retired as Secretary to the chair. She served the Commission with diligence and competence for 23 years. We wish her well in all that lies ahead.